IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13306 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PP VAKHARIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13306 of 1993

MR TUSHAR MEHTA for Petitioner No. 1

MS REETA CHANDARANA, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-1/1

NOTICE SERVED for Respondent No. 2

MR ARUN H MEHTA for Respondent No. 3-6

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 13/09/2004

ORAL JUDGEMENT

In the present petition, the petitioner has sought a mandamus directing the respondents to call the petitioner for interview and place his name in the select

list for recruitment to the post of Gujarat Engineering Service, Class - I cadre, if total number of marks obtained by him makes him so eligible, and a further direction for being given all consequential benefits with effect from 1980.

2. From the memo of the petition, it can be seen that the selection process to the post of Gujarat Engineering Service Class-I, which started in the year 1980 got caught in legal controversy and number of rounds of litigations followed without conclusion of the selection process or completion of formality of appointments. It has been brought to my notice by the learned Counsel appearing for the parties that one such judgement of the Division Bench of this High Court dated 5.11.1984 travelled upto the Hon'ble Supreme Court and the Hon'ble apex Court in its decision in Gujarat State Dy. Executive Engineers' Association Vs. State of Gujarat and ors., reported in 1994 Supp (2) SCC 591, was pleased to set aside the decision of the High Court and gave the following directions:-

"13. In the result this appeal succeeds and is allowed. The order of the High Court is set aside subject to following directions:-

(1) Any candidate who has been appointed in pursuance of the order passed by the High Court shall be deemed to be in service from the date he has joined and his seniority shall be reckoned from that date only,

(2) No fresh appointment shall be made.

(3) If vacancies for direct recruits have accrued between 1983 to 1993 and they have not been taken into account when the examination for 1993 was held, then they shall form part of the requisition to be sent by the Government to the Commission either for the next examination if it is going to be held within one year or a fresh examination may be held in the alternative for such vacancies only within a period of one year from today. This direction is being issued in the peculiar facts of this case."

The Hon'ble Supreme Court was pleased to hold that the direction of the High Court to appoint the candidates from the waiting list in the vacancies, which according to its calculation arose between the year 1980-83 and 1983-93, cannot be upheld.

3. In the above mentioned decision of the Hon'ble Supreme Court, it is directed that any candidate who has been appointed in pursuance of the order passed by the High Court shall be deemed to be in service from the date he joined and his seniority shall be reckoned from that date only. The prayer of the petitioner therefore for being granted the consequential effects from 1980 therefore, cannot be allowed.

4. From the record of the petition one finds that the petitioner was already discharging his duties as Executive Engineer in the cadre of Gujarat Engineering Service Class-I. The only gain from the present petition could have been improved seniority pursuant to deemed date of appointment. By virtue of the above mentioned decision of the Supreme Court, since it is not possible to grant any such relief, it is not necessary to examine several contentions raised by the petitioner in this petition. Substantially the petition has therefore become infructuous. Otherwise also, it would not be possible after such a long gap of time to put back the clock and grant benefit to the petitioner from 1980, that too without any effective interview as admittedly the petitioner was not called for such an interview.

5. In the result, I find that the petition is not required to be entertained and the same is disposed of accordingly. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas